

modified as necessary to conform to recommendations contained in the approved Report of the Nomenclature Committee.

Dated: December 16, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Parts 353, 355, and 356

[Docket No. 941264-4364]

RIN: 0625-AA45

Antidumping Duties; Countervailing Duties; Article 1904 of the North American Free Trade Agreement

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Advance notice of proposed rulemaking and request for public comments.

SUMMARY: The Department of Commerce ("the Department") intends to initiate a rulemaking proceeding to conform the Department's existing antidumping duty, countervailing duty, and NAFTA Article 1904 regulations to the Uruguay Round Agreements Act, which implemented the results of the Uruguay Round multilateral trade negotiations. In addition to conforming changes, the Department will be considering other changes to the procedural and substantive provisions of the antidumping and countervailing duty regulations. The overall objectives of this rulemaking proceeding will be to: (1) translate the principles of the implementing legislation into specific and predictable rules, thereby facilitating the administration of these laws and providing greater predictability for private parties affected by these laws; (2) simplify and streamline the Department's administration of antidumping and countervailing duty proceedings; (3) codify existing administrative practice, to the extent such codification is appropriate and is consistent with the first and second objectives; and (4) resolve any inconsistencies in the Department's administrative practice.

DATES: The Department will consider written comments if received not later than February 3, 1995. The Department will also consider written responses to

written comments if received not later than February 24, 1995.

ADDRESSES: Address written comments to Susan G. Esserman, Assistant Secretary for Import Administration, Central Records Unit, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, DC 20230. Comments should be addressed: Attention: Advance Notice of Proposed Rulemaking/Uruguay Round Agreements Act. Each person submitting a comment should include his or her name and address, and give reasons for any recommendation.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, (202) 482-4412, or David Mason Jr., (202) 482-4969.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 1994, President Clinton signed the Uruguay Round Agreements Act, Pub.L. 103-465 ("the URAA"), into law. The URAA implements the results of the Uruguay Round multilateral trade negotiations. Among the agreements negotiated as part of the Uruguay Round are the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("the Antidumping Agreement") and the Agreement on Subsidies and Countervailing Measures ("the Subsidies Agreement"). The URAA, among other things, conforms the U.S. antidumping and countervailing duty laws to the requirements of the Antidumping Agreement and the Subsidies Agreement.

The Department is initiating a rulemaking proceeding to conform the Department's existing regulations on antidumping duties, countervailing duties, and Article 1904 of the North American Free Trade Agreement to the provisions of the URAA. Although the Department expects that in many instances amendments to existing regulations will be of a conforming nature only, in the Statement of Administrative Action accompanying H.R. 5110 (H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994)), the Administration committed the Department to flesh out through regulation certain provisions of the bill.

In addition to regulations implementing the URAA, the Department intends to use this opportunity to proceed further with certain rulemaking proceedings on which work was suspended pending the completion of the Uruguay Round. These proceedings are listed below. In the Semiannual Unified Agenda of

Federal Regulations, published on April 25, 1994 (59 FR 20136), the Department indicated that these rulemaking proceedings had been withdrawn, but that it intended to address the subject matter covered by these rulemaking proceedings as part of a new, consolidated rulemaking proceeding which, among other things, would conform the antidumping and countervailing duty regulations to anticipated legislation implementing the Uruguay Round. The withdrawn rulemaking proceedings were:

- *Antidumping Duties* [RIN: 0625-AA29]: On February 1, 1989 (54 FR 5092), the Department published an Advance Notice of Proposed Rulemaking concerning regulations that would have codified existing administrative practice with respect to the identification and measurement of dumping.
- *Countervailing Duties* [RIN: 0625-AA31]: On May 31, 1989 (54 FR 23366), the Department published a Notice of Proposed Rulemaking that would have codified existing administrative practice with respect to the identification and measurement of subsidies.

- *Antidumping and Countervailing Duties; Significant Ministerial Errors* [RIN: 0625-AA35]: On January 10, 1992 (57 FR 1131), the Department published a Notice of Proposed Rulemaking setting forth the circumstances in which the Department would correct significant ministerial errors made in preliminary antidumping and countervailing duty determinations.

- *Antidumping Duties; Methodologies for Assessment Instructions* [RIN: 0625-AA36]: On December 5, 1991 (56 FR 6396), the Department published an Advance Notice of Proposed Rulemaking regarding regulations which would have changed and/or codified existing administrative practice to simplify and streamline the collection of estimated antidumping duties and the assessment of antidumping duties.

- *Antidumping Duties; Calculation of Weighted Average Dumping Margin* [RIN: 0625-AA39]: The Department had considered initiating a rulemaking proceeding which would have addressed a problem in the Department's calculation of weighted-average dumping margins caused by the Department's treatment of adjustments for indirect taxes. See 59 FR 20156-57.

- *Antidumping Duties; Period of Investigation* [RIN: 0625-AA41]: The Department had considered initiating a rulemaking proceeding to amend the Department's antidumping regulations with respect to the period covered by an antidumping investigation. See 59 FR 20157.

• *Procedures for Imposing Sanctions for Providing False Certifications in an Antidumping or Countervailing Duty Proceedings* [RIN: 0625-AA42]: The Department had considered initiating a rulemaking proceeding that would have established standards for finding certifications to be false, the sanctions that could be imposed, and the procedures for imposing sanctions. See 59 FR 20157-58.

As part of its consolidated rulemaking proceeding, the Department intends to review the subject matter of the withdrawn rulemaking proceedings in light of the URAA and other developments in the antidumping and countervailing duty laws. One of the purposes of this review will be to determine whether the problems identified in the above rulemaking proceedings remain, and, if so, whether they should be addressed by regulations.

The overall objectives of this consolidated rulemaking proceeding will be to: (1) translate the principles of the URAA into specific and predictable rules, thereby facilitating the administration of these laws and providing greater predictability for private parties affected by these laws; (2) simplify and streamline, to the extent permitted by law, the Department's administration of antidumping and countervailing duty proceedings; (3) codify existing administrative practice, to the extent such codification is appropriate and is consistent with the first and second objectives; and (4) resolve any inconsistencies in the Department's administrative practice.

Timetable

The Department intends to issue a comprehensive set of proposed regulations by June 30, 1995. These comprehensive regulations will address the objectives described above, and an opportunity for public comment will be provided. The Department intends to issue a comprehensive set of final regulations by January 1, 1996. These final regulations will replace the interim-final regulations described in the following paragraph.

The URAA became effective January 1, 1995, and applies to investigations initiated as a result of petitions filed on or after that date, and administrative reviews requested on or after that date. To facilitate the administration of the new law, the Department intends to issue interim-final regulations that will amend the existing regulations where they are clearly at odds with the URAA, and where regulations are essential to administration of the new law. These

interim-final regulations will be effective upon publication and will govern the Department's handling of antidumping and countervailing duty proceedings pending the promulgation of final rules described above. The interim-final regulations will make plain that where the URAA, as amplified by the Statement of Administrative Action, is in conflict with the existing regulations, the new statute will prevail.

Request for Comments

The conclusion of the Uruguay Round and the enactment of implementing legislation offer an appropriate time for the Department and the public to reexamine the Department's existing antidumping and countervailing duty regulations. The objectives described above encompass all aspects of the Department's administration of the antidumping and countervailing duty laws.

However, it should be emphasized that the Department has not reached any conclusions concerning any of these subjects. Instead, before issuing proposed regulations, the Department wishes to receive public comments on all aspects of the Department's administration of the antidumping and countervailing duty laws. The Department believes that such public comment will improve its understanding of the issues and problems that need to be addressed. Therefore, interested persons are invited to address any issue of law, policy, or procedure, and to suggest appropriate amendments to the antidumping duty, countervailing duty, and NAFTA regulations for consideration by the Department.

Format and Number of Copies

Parties should submit comments in the following format: (1) number each comment in accordance with the number designated for that issue as indicated in the list of issues set forth below; (2) begin each comment on a separate page; (3) concisely state the issue identified and discussed in the comment; and (4) provide a brief summary of the comment (a maximum of 3 sentences) and label this section "summary of the comment."

To simplify the processing and distribution of these comments, parties are encouraged to submit documents in electronic form accompanied by an original and one paper copy. All documents filed in electronic form must be on DOS formatted 3.5" diskettes, and must be prepared in either WordPerfect format or a format that the WordPerfect program can convert and import into

WordPerfect. Each comment submitted should be on a separate file on the diskette and labeled by the number designated for that issue based upon the list of issues outlined below.

Comments received on diskette by the due date will be made available to the public on Internet. In addition, the Department will make comments available to the public on 3.5" diskettes at cost, and paper copies available for reading and photocopying in Room B-099 of the Central Records Unit. Questions concerning file formatting, document conversion, Internet address, or other filing requirements should be addressed to Andrew Lee Beller, Director of Central Records, (202) 482-1248.

Classification of Issues for Comment

Countervailing Duty Issues

1. Grants, loans, equity, loan guarantees, and debt forgiveness (including benchmarks and discount rates);
2. Tax programs (not including rebates of indirect taxes on export, which is included in category number five below);
3. Government provision/procurement (including adequate remuneration);
4. Indirect subsidies, privatization, and upstream subsidies;
5. Export subsidies (e.g., subsidies included in the Illustrative List);
6. Import substitution subsidies, worker benefits, and subsidies on agricultural products;
7. Specificity and infrastructure;
8. Green light subsidies and subsidies enforcement;
9. Allocation;
10. CVD methodology issues other than those outlined above.

Antidumping Issues

11. Comparison Methodology:
 - a. Viability, third-country sales, intermediate country sales, and tolling;
 - b. Constructed export price deductions and value-added deductions;
 - c. Normal value adjustments;
 - d. Level of trade matching, level of trade adjustments, and constructed export price offset;
12. Start-up;
13. Profit and selling, general and administrative expenses in constructed value;
14. Sales below cost of production and constructed value generally;
15. Currency conversion;
16. Price averaging;
17. Anticircumvention;
18. Affiliated parties (address separately for AD and CVD);

19. AD methodology issues other than those outlined above;

Procedural Issues

- 20. Initiation of petitions;
- 21. Evidence;
- 22. Facts available;
- 23. *De Minimis* (address separately for AD and CVD);
- 24. Reviews, other than five-year reviews (if specific to AD or CVD, please specify);
- 25. Five-year reviews and revocation;
- 26. Repeal of Section 303;
- 27. Regional industries;
- 28. Critical circumstances;
- 29. Simplification;
- 30. Business proprietary information and administrative protective orders;
- 31. Ministerial errors;
- 32. Procedural issues other than those outlined above;
- 33. Other issues.

List of Subjects in 19 CFR Parts 353, 355, and 356

Business and industry, Foreign trade, Imports, Trade practices.

Dated: December 27, 1994.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 53

[EE-56-94]

RIN 1545-AT03

Excise Tax On Self-Dealing By Private Foundations.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations that define self-dealing by private foundations. The proposed amendments modify the application of the self-dealing rules to the provision by a private foundation of director's and officer's liability insurance to disqualified persons. These amendments provide that indemnification by a private foundation or provision of insurance for purposes of covering the liabilities of the person in their capacity as a manager of the private foundation is not self-dealing. Additionally, the amounts expended by the private foundation are not included

in the compensation of the disqualified person for purposes of determining reasonable compensation of the disqualified person.

DATES: Written comments and requests for a public hearing must be received by April 3, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (EE-56-94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (EE-56-94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington DC.

FOR FURTHER INFORMATION CONTACT: Terri Harris or Paul Accettura at 202-622-6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 4941(a) imposes a tax on each act of self-dealing between a disqualified person and a private foundation. Section 4941(d)(1)(E) defines self-dealing as any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation. Section 53.4941(d)-2(f)(1) currently provides that provision of insurance for the payment of chapter 42 taxes by a private foundation for a foundation manager is self-dealing unless the premium amounts are included in the compensation of the foundation manager. Direct indemnification for the payment of chapter 42 taxes to the foundation manager from the private foundation is self-dealing whether or not the amounts are included in the manager's compensation.

Section 53.4941(d)-2(f)(3) currently provides that the indemnification of certain expenses by a private foundation for a foundation manager's defense in a judicial or administrative proceeding involving chapter 42 taxes is not self-dealing. Such expenses must have been reasonably incurred by the manager in connection with such proceeding. Also, the manager must be successful in such defense, or such proceeding must be terminated by settlement, and the manager must not have acted willfully and without reasonable cause with respect to the act or failure to act which led to the liability for tax under chapter 42.

Revenue Ruling 82-223, 1982-2 C.B. 301, discussed the application of the self-dealing rules to the provision of insurance by a private foundation for the indemnification of a foundation manager's defense in actions involving

state laws relating to the mismanagement of funds of charitable organizations. Rev. Rul. 82-223 implied that the private foundation's provision of insurance is includible in the foundation manager's taxable income. This position created a situation in which private foundation managers who were "employees" of the private foundation could exclude the insurance premiums from their income under the section 132(d) fringe benefit exclusion; however, this raised the possibility that unpaid "volunteer" managers would have to include the premiums in their income and, since they had no profit motive with which to support a working condition fringe benefit exclusion, could not exclude the income.

This situation has recently been corrected by the publication of amendments to regulations under section 132. Section 1.132-5(r) currently provides that bona fide volunteers for exempt organizations are deemed to have a profit motive for purposes of excluding a working condition fringe benefit.

Although these benefits are excluded from compensation under section 132(d), the problem of including the income excluded under section 132 in the compensation paid to the foundation manager still remains for purposes of determining whether a foundation manager's compensation is reasonable. These amendments to § 53.4941(d)-2(f) are intended to clarify the IRS's position that, generally, the payment of indemnification and insurance by a private foundation for a foundation manager in situations arising from the performance of services on behalf of the private foundation are not self-dealing and are not considered when determining reasonable compensation of the foundation manager.

Explanation of Provisions

The proposed regulations provide that it generally will not be self-dealing, or treated as the payment of compensation, if a private foundation indemnifies or provides insurance to a foundation manager in any civil judicial or civil administrative proceeding arising out of the manager's performance of services on behalf of the foundation.

An indemnification or purchase of insurance would be an act of self-dealing if the expenses relating to such defense are not reasonably incurred by the manager in connection with such proceeding. Additionally, the manager must not have acted willfully and without reasonable cause with respect to the act or failure to act which led to such proceeding or to such liability.